

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSE A. HERNANDEZ-TIRADO,

Plaintiff,

v.

CRAIG LOWE, et al.,

Defendants.

NO. 3:14-CV-2492

(JUDGE CAPUTO)

ORDER

NOW, this 23rd day of September, 2015, upon review of the Reports and Recommendations of Magistrate Judge Carlson (Docs. 36 and 37) for plain error or manifest injustice, **IT IS HEREBY ORDERED** that:

- (1) The Report and Recommendation (Doc. 36) is **ADOPTED in its entirety**.
- (2) Defendants' Motion to Dismiss (Doc. 17) Plaintiff's (1) verbal harassment claims against Defendants Frawley, Brady, and McNeill; (2) access-to-courts claim against Defendant Lowe; and (3) Eighth Amendment claims relating to a single food service incident in November 2014 and his housing in a cell without a toilet for approximately five (5) hours in November 2014 is **GRANTED**.
- (3) Plaintiff may **PROCEED** with his Eighth Amendment constitutional claim under § 1983, *i.e.*, confinement in conditions of extreme cold below fifty (50) degrees Fahrenheit without any sheets or blankets.
- (4) The Report and Recommendation (Doc. 37) is **ADOPTED in its entirety**.
- (5) Defendant Kimberly Montanredes' Motion to Dismiss (Doc. 23) Plaintiff's constitutional claims relating to deliberate indifference to Plaintiff's medical

needs and equal protection claims, pursuant to 28 U.S.C. § 1331 is
GRANTED.

- (6) Plaintiff is granted **twenty-one (21) days** from the date of entry of this Order to file an amended complaint for his equal protection claims
- (7) The matter is **RECOMMITTED** to Magistrate Judge Carlson for further proceedings.

A handwritten signature in cursive script, appearing to read "A. Richard Caputo", written in black ink.

A. Richard Caputo
United States District Judge